IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.668 of 1998

WEDNESDAY, THE ELEVENTH DAY OF APRIL TWO THOUSAND AND SEVEN

Between:

The Divisional Forest Officer, Flying Squad Division, Chittoor.

... Petitioner

And

The District Judge, Chittoor, and another.

... Respondents

Order:

Petitioner, a Divisional Forest Officer in the Flying Squad Division of Chittoor, has filed this Writ Petition calling in question the legality of the order dated 30-12-1996, passed by the first respondent – District Judge, Chittoor, in A.S.No.27 of 1991.

2. Facts of the case in brief are:

A lorry owned by the second respondent bearing No.ATT-6543 was intercepted by the Forest Range Officer, Flying Squad, Piler, on

06-04-1989, and on its checking, it was found that it was carrying 36 Red Sanders reapers, weighing 214 Kgs., unauthorizedly. The lorry was seized on the same day along with the timber and produced before the Authorized Officer/Divisional Forest Officer, Flying Squad Division, Piler and proceedings were initiated under section 44 (2-A) of the A.P. Forest Act. During pendency of the proceedings, the owner of the lorry had filed a Writ Petition before this court in W.P.No.6707 of 1989 seeking release of the lorry. This court by order dated 10-04-1989 ordered release of the lorry on furnishing bank guarantee of Rs.50,000/- and giving an undertaking that the same shall not be sold and shall be produced as and when required by the Authorized Officer.

3. Thereafter, show cause notice dated 22-05-1989 was issued to the owner and the driver of the lorry, requiring them to show cause as to why the said lorry should not be confiscated under Section 44 (2-A) of the Act, for its involvement in a forest offence. The owner of the lorry, who is the second respondent herein, has submitted his explanation stating that he had no knowledge of transportation of Red Sanders undertaken by the driver of the lorry, and, in fact, he had given specific instructions to the driver not to undertake any transportation, which is not permissible. The primary authority, while rejecting the defence of the second respondent, who is the owner of the lorry, has ordered confiscation of the deposited amount of Rs.50,000/-, on the ground that he has not produced the vehicle in spite of directions. As against the same, the owner of the lorry has filed an appeal before the first respondent/appellate authority, i.e. The District Judge, Chittoor, in A.S.No.27 of 1991. Though the appellate authority has also agreed with the findings recorded by the primary authority with regard to commission of offence and the involvement of the vehicle in the offence; however, taking into account the quantum of the timber

seized, has reduced the confiscation to Rs.30,000/-, as against Rs.50,000/- ordered by the primary authority. The said order is challenged in this Writ Petition.

4. Learned Government Pleader for Forests, appearing for the petitioner, submits that once if it is found that a vehicle is involved in commission of a forest offence, the entire vehicle is liable to be confiscated and as much as the vehicle was released on furnishing bank guarantee of Rs.50,000/-, the primary authority has correctly ordered confiscation of the entire value of the timber, i.e. Rs.50,000/-. It is also submitted that the appellate authority, which has agreed with the findings of the primary authority with regard to commission of offence, has no jurisdiction to order confiscation of Rs.30,000/- only, instead of Rs.50,000/-.

5. Though notices have been served on the respondents, none appears for them and there is no representation.

6. It is to be seen that under Section 44(2-A) of the Act, the authorized officer is empowered to confiscate the timber or forest produce, and in case where forest offence was committed along with the tools, etc., he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, boats or vehicles used in committing such offence. While confiscating the vehicle along with the timber, tools etc., it is always open for the authority to confiscate any portion having regard to the gravity of the offence. The vehicle or the value thereof also can be ordered to be confiscated. The primary authority ordered to confiscate an amount of Rs.50,000/-. The said amount was ordered to be deposited by this court for release of the lorry. The appellate authority, taking into account the quantum of timber, reduced the amount of Rs.50,000/- to Rs.30,000/-, thereby

ordering to confiscate Rs.20,000/-. The appellate authority has considered the issue in proper perspective as per Section 44 (2-D) of the Act. Hence, I do not find any illegality in the impugned order warranting interference under Article 226 of the Constitution of India.

7. Writ Petition is accordingly dismissed. No costs.

JUSTICE R. SUBHASH REDDY.

April 11, 2007
MRR